

Senate Bill No. 1729

Passed the Senate August 23, 2004

Secretary of the Senate

Passed the Assembly August 19, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 42301, 42310, 42310.2, 42325, and 42326 of, and to repeal Sections 42310.3 and 42324 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 1729, Chesbro. Plastic containers: recycling.

(1) Existing law, the California Integrated Waste Management Act of 1989, administered by the California Integrated Waste Management Board, requires every rigid plastic packaging container, as defined, sold or offered for sale in this state, to generally meet one of specified criteria, including having a specified recycling rate including, among other things, that the container have a recycling rate of 25% or have a recycling rate of 55%, if its primary material is polyethylene terephthalate (PETE), based on annual reports published by the board, or have a recycling rate of 45% if it is a product-associated rigid plastic packaging container. Existing law defines the term “recycling rate” as including one of 4 specified rates, including the proportion that all rigid plastic packaging containers sold, or offered for sale in the state are being recycled in a given calendar year, as specified, and the proportion that a polyethylene terephthalate (PETE) rigid plastic packaging container sold or offered for sale in the state is being recycled in a given calendar year, as specified. Existing law exempts rigid plastic containers that contain cosmetics and food from meeting those criteria, but requires those containers to be included in calculating recycling rates.

This bill would revise the definition of recycling rate to delete those 2 rates from that definition.

This bill would modify the criteria for these containers to delete the recycling rates based on the annual reports published by the board and would modify the requirement for product-associated containers to require the rate to be demonstrated to the board by the product maker, manufacturer, or other entity. The bill would authorize the board to take appropriate action to verify the demonstration, but the bill would specify that the board is not required to expend state funds to conduct a survey or calculate the



rate. The bill would make conforming changes with regard to this modification of the criteria.

This bill would delete the requirement that rigid plastic containers that contain cosmetics and food and are recycled be included in calculating recycling rates. The bill would also delete an obsolete provision.

(2) Existing law requires the board, by July 1, 1994, to adopt regulations to implement specified plastic packaging recycling requirements.

This bill would delete the date requirement.

(3) The bill would make technical, nonsubstantive changes.

The people of the State of California do enact as follows:

SECTION 1. Section 42301 of the Public Resources Code is amended to read:

42301. For purposes of this chapter, the following definitions apply:

(a) “Curbside collection program” means a recycling program that collects materials set out by homeowners for collection at the curb at intervals not less than every two weeks. “Curbside collection program” does not include redemption centers, buyback locations, drop-off programs, material recovery facilities, or plastic recovery facilities.

(b) “Refillable package” means a rigid plastic packaging container that the board determines is routinely returned to and refilled by the product manufacturer at least five times with the original product contained by the package.

(c) “Reusable package” means a rigid plastic packaging container that the board determines is routinely reused by consumers at least five times to store the original product contained by the package.

(d) “Manufacturer” means the producer or generator of a product that is sold or offered for sale in the state and that is stored inside of a rigid plastic packaging container.

(e) “Rigid plastic packaging container” means any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding



other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state.

(f) “Postconsumer material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product lifecycle. Postconsumer material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(g) “Recycled” means a product or material that has been reused in the production of another product and has been diverted from disposal in a landfill.

(h) “Recycling rate” means either of the following:

(1) The proportion, as measured by weight, volume, or number, that a particular type of rigid plastic packaging container sold or offered for sale in the state, such as a milk jug, soft drink container, or detergent bottle, is being recycled in a given calendar year.

(2) The proportion, as measured by weight, volume, or number, that a product-associated rigid plastic packaging container sold or offered for sale in the state is being recycled in a given calendar year.

(i) (1) “Source reduced container” means either of the following:

(A) A rigid plastic packaging container for which the manufacturer seeks compliance as of January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.

(B) A rigid plastic container for which the manufacturer seeks compliance after January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with one of the following:

(i) The packaging used for the product by the manufacturer on January 1, 1995.

(ii) The packaging used for that product by the manufacturer over the course of the first full year of commerce in this state.

(iii) The packaging used in commerce that same year for similar products whose containers have not been considered source reduced.



(2) A rigid plastic packaging container is not a source reduced container for the purposes of this chapter if the packaging reduction was achieved by any of the following:

(A) Substituting a different material type for a material that previously constituted the principal material of the container.

(B) Increasing a container's weight per unit or use of product after January 1, 1991.

(C) Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

(j) "Product-associated rigid plastic packaging container" means a brand-specific, rigid plastic packaging line that may have one or more sizes, shapes, or designs and that is used in conjunction with a particular generic product line.

(k) "PETE" means polyethylene terephthalate as specified in subdivision (a) of Section 18015.

(l) "HDPE" means high-density polyethylene.

SEC. 2. Section 42310 of the Public Resources Code is amended to read:

42310. Except as otherwise provided in this chapter, every rigid plastic packaging container sold or offered for sale in this state shall, on average, meet one of the following criteria:

(a) Be made from 25 percent postconsumer material.

(b) Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container, as demonstrated to the board by the product maker, container manufacturer, or other entity. The board may take appropriate action to verify the demonstration, but the board is not required to expend state funds to conduct a survey or calculate the rate.

(c) Be a reusable package or a refillable package.

(d) Be a source reduced container.

(e) Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years.

SEC. 3. Section 42310.2 of the Public Resources Code is amended to read:

42310.2. (a) On or before July 1, 1994, as part of the regulations required to be adopted pursuant to Section 42325, the board shall adopt regulations to carry out the requirements of paragraph (1) of subdivision (c) of Section 42310.1. In adopting regulations pursuant to this section, the board shall make every



effort to limit paperwork and information to only those matters that are needed for the board to determine if manufacturers are taking all feasible actions to ensure the reduction, recycling, or reuse of the rigid plastic packaging containers described in subdivision (a) of Section 42310.1, and the development and expansion of markets for rigid plastic packaging containers.

(b) On or before February 1, 1996, the board shall review, and approve or disapprove, the reports required pursuant to paragraph (1) of subdivision (c) of Section 42310.1. If a report is not submitted pursuant to a schedule established by the board, or, if, based upon the report, the board determines that a manufacturer has not taken all feasible actions to ensure the reduction, recycling, or reuse of the containers and the development and expansion of markets for rigid plastic packaging containers, the board may take one of the following actions, as selected by the manufacturer:

(1) Require the manufacturer to take additional actions, including, but not limited to, one or more of the measures described in paragraph (1) of subdivision (c) of Section 42310.1, to ensure that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, recycling, or reuse of the containers and the development and expansion of markets for rigid plastic packaging containers.

(2) Impose a civil penalty of up to one hundred thousand dollars (\$100,000) pursuant to Section 42322. In imposing monetary penalties pursuant to this paragraph, the board shall take into consideration all of the following factors:

(A) The size and net worth of the manufacturer.

(B) The impact of the violation on the overall objectives of this chapter.

(C) The severity of the violation. A penalty imposed pursuant to this paragraph shall not be required to be paid by a manufacturer before January 1, 1997.

(c) If the board determines that the conditions in paragraphs (1) and (2) are met, the board shall enter into a contract, or other legally binding agreement, with one or more trade associations representing manufacturers of resin, manufacturers of rigid plastic packaging containers, or manufacturers of products packaged in rigid plastic packaging containers subject to this section and Section 42310.1. The agreement shall allow the trade association, in lieu of those individual manufacturers in the trade association



who elect to be a party to the contract or agreement, to submit the report required pursuant to paragraph (1) of subdivision (c) of Section 42310.1 and to implement the actions identified in the report. The board shall enter into the agreement only if both of the following conditions exist:

(1) The agreement ensures that the report will contain sufficient information that otherwise would be required to be submitted by individual manufacturers pursuant to Section 42310.1, and any other information that is necessary and directly related to the board's ability to comply with this section.

(2) The agreement ensures that each manufacturer that elects to be a party to the agreement and that is a member of the trade association that submits the report shall be liable for the full amount of any civil penalties that may be imposed or shall comply with any requirement imposed by the board pursuant to paragraph (1) of subdivision (b), as selected by the manufacturer. A manufacturer subject to this paragraph shall not be liable for a civil penalty greater than one hundred thousand dollars (\$100,000), regardless of the number of trade associations of which the manufacturer is a member.

(d) Notwithstanding any other provision of this section, a trade association representing resin manufacturers shall be responsible for submitting an additional report as provided pursuant to paragraph (1) of subdivision (c) of Section 42310.1. The resin manufacturer's trade association is subject to the review, penalties, and sanctions specified in paragraphs (1) and (2) of subdivision (b). No member of the resin manufacturer's trade association is liable for penalties and sanctions set forth in paragraph (1) or (2) of subdivision (b) pursuant to this subdivision if that member would not otherwise be subject to those penalties and sanctions.

(e) For the purposes of subdivision (b) and paragraph (1) of subdivision (c) of Section 42310.1, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(f) For purposes of Section 42310.1 and this section regarding all reporting, compliance, and penalty obligations, "manufacturer" includes all subsidiaries and affiliates.

SEC. 4. Section 42310.3 of the Public Resources Code is repealed.



SEC. 5. Section 42324 of the Public Resources Code is repealed.

SEC. 6. Section 42325 of the Public Resources Code is amended to read:

42325. The board shall adopt regulations to implement this chapter. These regulations shall include, but shall not be limited to, all of the following:

(a) Procedures for certifying compliance with Article 2 (commencing with Section 42310), including a requirement that product manufacturers include in their specifications for rigid plastic packaging containers a requirement that the packaging manufacturer certify that the rigid plastic packaging containers comply with this chapter.

(b) Procedures for considering and granting waivers pursuant to Article 4 (commencing with Section 42330).

SEC. 7. Section 42326 of the Public Resources Code is amended to read:

42326. In developing the regulations required by Section 42325, the board shall consult with representatives of the manufacturers affected by this chapter, with representatives of environmental organizations, and other interested parties.



Approved _____, 2004

Governor

